

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FILED/ACCEPTED

AUG 31 2007

Federal Communications Commission
Office of the Secretary

In the Matter of the)

DOCKET FILE COPY ORIGINAL

Petition of Gila River Telecommunications, Inc.)
to Unfreeze Part 36 Category Relationships)
_____)

CC Docket No. 80-286

SUPPLEMENT TO PETITION AND
REQUEST FOR CONFIDENTIAL TREATMENT

Gila River Telecommunications, Inc. ("GRTI"), by its undersign attorneys, and pursuant to Section 0.459 of the Commission's Rules, 47 C.F.R. § 0.459, respectfully requests confidential treatment of the exhibits filed in support of its Supplement to GRTI's Petition filed in the above-referenced proceeding. Specifically, GRTI requests confidential treatment of the "Summary of Frozen vs. Unfrozen Interstate and Federal Universal Service High Cost Fund Settlements" and associated Exhibits A through D (together, "the Exhibits"). This information has been prepared at the request of the Commission's staff. GRTI Requests that the Commission afford confidential treatment to the exhibits as they contain highly sensitive and proprietary information that is not generally available to the public. A copy of the Supplement is attached to this submission. In support hereof, GRTI states as follows:

1. The information contained in the Exhibits consist of highly confidential information, including cost and rate base information, balance sheet data, and projected future expenses. Such information is and proprietary, contains sensitive commercial data, and is not generally available to the public.

2. The confidential information concerns services that are subject to competition within the meaning of Section 0.459(b)(4) of the Commission's Rules, 47 C.F.R. § 0.459(b)(4), and in particular, voice services.

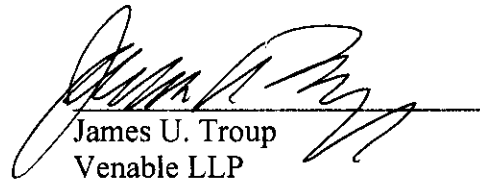
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3. The information detailed in the Exhibits are not generally available to the public.

GRTI has at all times treated the information as confidential, and, with the exception of necessary disclosures to its consultants and attorneys involved in advising GRTI in the instant proceeding, GRTI has not disclosed the information to outside third parties. Release of the subject information would likely cause substantial harm to GRTI's operations if they were to be publicized because such release would allow a competitor an unfair and artificial competitive advantage.

4. GRTI does not object to limited disclosure of the confidential information subject to a protective order such as the standard model adopted by the Commission,¹ However, to the extent that a party requests access to any portion of the Exhibits or the information contained therein, GRTI requests that the Commission notify GRTI so that it can take such appropriate action as necessary to protect that information.

Respectfully submitted,



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Date: August 31, 2007

¹ *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, GC Docket No. 96-55, Report and Order, 13 FCC Rcd 24816 (1998).

August 31, 2007

REDACTED – FOR PUBLIC INSPECTION***Via Hand Delivery***

Marlene S. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

FILED/ACCEPTED**AUG 31 2007**Federal Communications Commission
Office of the Secretary

Attention: Chief, Wireline Competition Bureau

Re: Supplement to Petition of Gila River Telecommunications, Inc. to Unfreeze
Part 36 Category Relationships, CC Docket No. 80-286 (filed November 21, 2006)

Dear Ms. Dortch:

Gila River Telecommunications, Inc. ("GRTI"), by its attorneys and pursuant to discussions with the Commission's staff, hereby submits this letter and the data attached hereto (collectively, the "Supplement") in order to supplement its above-referenced "Petition to Unfreeze Part 36 Category Relationships" (the "Petition"). This Supplement provides further information in support of GRTI's request to waive the separations freeze with respect to certain accounts, so that GRTI may accurately report its costs to NECA for the current configuration of its facilities.

Background

As stated in the Petition, GRTI is an incumbent local exchange carrier ("ILEC") which is wholly-owned by the Gila River Indian Community ("GRIC" or the "Tribe") and provides telecommunications and information services on tribal lands. GRTI has approximately 3,500 access lines, in a service area of more than 372,500 acres. *See Petition* at 6. The service area has an extraordinarily low population density, of approximately five homes per square mile. GRTI's loop costs are 506% of the national average (assuming its category relationships are unfrozen to reflect actual loop costs).

When the FCC approved GRTI's acquisition of the exchange in 1992, there were a mere 526 access lines in service on the Tribe's lands. *See, US West Communications and Gila River Telecommunications, Inc.*, 7 FCC Rcd. 2161, ¶ 3 (Com. Car. Bur. 1992). At the time, GRTI stated its intention to expand basic local service to 600 unserved customers within 5 years, and to replace the antiquated facilities then in place with all digital exchanges. *Id.* GRTI met those ambitious service level goals and indeed, exceeded them. Despite the high costs of deployment

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in the sprawling, sparsely-populated territory served by GRTI, it has achieved a penetration rate of approximately 70%.

While that figure represents a dramatic improvement over the 10% penetration in the GRIC's territory when GRTI acquired the exchange, *see* Petition at 6, and over the average 47% penetration rate for tribal lands generally, it nonetheless falls well shy of the 94% of the general population who have telephone service in their homes. *See, Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, Twenty-Fifth Order on Reconsideration, Report and Order, and Further Notice of Proposed Rulemaking*, 18 FCC Rcd. 10958, ¶ 20 (2003) ("*Unserved Areas Order*"). The Commission has previously noted the many difficulties that limit telephone penetration on tribal lands, including inadequate infrastructure, the high costs of facilities deployment to remote areas and the low income levels of prospective residential customers. *Id.*

Faced with those challenges, GRTI has nonetheless made every effort to expand and improve services to the GRIC. Most particularly for purposes of the Petition, in recent years GRTI completed replacement of the former, obsolete host-remote configuration of its facilities with a more modern and efficient network architecture. The current configuration of GRTI's facilities, including a fiber ring and the addition of some 65 miles of fiber optic cable, provide for greater redundancy, thereby helping to ensure that Tribe members served by the network will have access to emergency services and other critical communications services. *Cf.* Petition at 11-12. Moreover, the new configuration is capable of providing advanced telecommunications and information services which would not have been possible with GRTI's former facilities.

The new configuration of GRTI's network is no longer reliant on the large number of switches which the previous configuration required. This new architecture relies on circuit equipment which, but for the Commission's separations freeze, would be accounted for as loop plant rather than as switching equipment. In short, the Part 36 category relationships that applied to GRTI's facilities when the freeze was adopted in 2001 no longer accurately reflect GRTI's current facilities. The upgrading of GRTI's network, without the ability to revise its category relationships and allocations factors, has caused it to suffer a loss of some \$1.2 million annually in high cost loop support from the High Cost Fund to which its now-current network design would have entitled it. Because GRTI had anticipated the expiration of the freeze by June 30, 2006, it did not seek relief from the Commission immediately. However, once the Commission extended the separations freeze beyond the June 30, 2006 expiration date for another three years,

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the loss of Universal Service support has become a critical factor impeding GRTI's ability to extend and continue to upgrade its service to its community.

Supplemental Data

Attached hereto please find a "Summary of Frozen vs. Unfrozen Interstate and Federal Universal Service High Cost Fund Settlements" and associated Exhibits A through D, showing the amounts of GRTI's Interstate Settlement amounts and High Cost Fund support, both under the current classification of GRTI's facilities and as proposed in the Petition. This information has been prepared at the request of the Commission's staff. GRTI requests that the Commission give confidential treatment to this highly sensitive proprietary information.

The Relief Requested by GRTI is Limited in Scope

In this Supplement, GRTI wishes to clarify that it does not seek a 2006 effective date for the Commission order granting its waiver request. Any implication to that effect in the Petition was unintentional. Rather, GRTI acknowledges the reality of the petition process and seeks to remove itself from the Part 36 separations freeze effective from the grant of the waiver. GRTI then seeks only to correct its accounting as permitted by Sections 36.611 and 36.612 of the Commission's rules to reflect the grant of the instant wavier request. In implementing the Commission's rules, NECA permits companies to correct submissions of their interstate costs during a twenty-four month period. *See, e.g.,* In the Matter of July 1, 2004 Access Charge Tariff Filings, Reply of National Exchange Carrier Association, Inc., at n. 5 (filed on or about June 29, 2004); http://www.usac.org/res/documents/hc/pdf/1Q07_lines.pdf; and "Change to Administrative Practices Regarding Line Count Revisions by Competitive Eligible Communications Carriers (CETCs) (12/1/2006)," <http://www.usac.org/hc/tools/latest-news>. Consistent with that common practice, GRTI requests that it be allowed to file corrected account information for a period of no more than twenty-four months prior to the date on which its Petition is granted, and to receive Universal Service support consistent with its corrected accounting for that period.

The Public Interest Supports Granting the Petition

The Commission's core mandate is "to make available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, nationwide and world-wide wire and radio communication service with adequate facilities at reasonable charges[.]" 47 U.S.C. § 151. The Universal Service regime is

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intended to advance that central purpose of the Communications Act; its governing principles include ensuring that “[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, . . . have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.” 47 U.S.C. § 254(b)(3). The Commission has acknowledged that “the lack of availability of telecommunications service on tribal lands is at odds with the statutory goal” announced in Section 254(b)(3). *See Unserved Areas Order*, 18 FCC Rcd. 10958, ¶ 3. The Commission therefore pledged that “advancement of universal service on tribal lands remains a major policy goal of this Commission.” *Id.* at ¶ 1. A grant of the relief requested in GRTI’s Petition would be consistent with and further these statutory obligations and policy goals.

In other contexts, the Commission has noted the special circumstances that confront service providers on tribal lands, including the high costs of deployment and the prevalence of poverty, in granting relief from its rules and procedures to allow such providers access to Universal Service funding. Similar considerations support a grant of GRTI’s Petition. For example, in *Mescalero Apache Telecom, Inc.*,¹ the Commission viewed a telephone company’s request for waiver of Section 54.305 of the rules in light of its ownership by the Mescalero Apache tribe and the Commission’s “obligation to work with Indian Tribes on a government-to-government basis consistent with the principles of Tribal self-government.” *Id.* at ¶ 8. The Commission went on to detail the high loop costs, difficult terrain, and low telephone penetration, and found that the public interest warranted a rule waiver that would make high cost support immediately available to the tribal carrier. Said the Commission:

“We find that [a grant of the waiver] is consistent with our obligations under the historic federal trust relationship between the federal government and federally-recognized Indian tribes to encourage sovereignty and self-governance and to ensure a standard of livability for members of Indian tribes on tribal lands. By granting this waiver we will enhance Mescalero Apache tribal communities’ access to telecommunications, including access to interexchange services, advanced telecommunications, and information services, and thereby increase the tribal communities’ access to education, commerce, government and

¹ 16 FCC Rcd. 1312 (2001) (“*Mescalero Commission Order*”).

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public services. These measures will also help bridge the physical distances between those living on the Reservation and the emergency, medical, employment and other services they may need to improve the standard of living on the Reservation. Moreover, this result will be realized under the direction of the Mescalero Apache Tribe.”

Id. at ¶ 11.

These same policy considerations support a grant of GRTI’s Petition. As previously indicated, GRTI is wholly-owned by the Gila River Tribal Community. GRTI’s operations, including its deployment of telecommunications infrastructure capable of advanced service offerings, are a crucial part of the Tribe’s economic development activities. That infrastructure also provides a vital link to isolated residents on these sparsely-populated tribal lands. As an entity wholly-owned by the Tribe, GRTI is intimately familiar with the community it serves and uniquely positioned to advance universal service in that community. The Petition provides the Commission with an opportunity to advance its policy working cooperatively with tribal governments to address telephone penetration levels on tribal lands. *See, e.g., Unserved Areas Order, supra*, at ¶ 1; *Statement of Policy on Establishing Government-to-Government Relationship with Indian Tribes*, FCC 00-207 (rel. June 23, 2000).

Conversely, a denial of the Petition would undermine the very policies underlying Section 254 of the Communications Act that the Commission has sought to advance. As stated in the Petition, unless GRTI can recover Universal Service support commensurate with its costs, it will either need to forego further investment in expanding into unserved areas and improving services, or it will need to raise rates. Petition at 12-13. Although GRTI has historically instituted rate increases to support build-out in its service area, *see, US West Communications and Gila River Telecommunications, Inc., supra*, at ¶ 7, the Tribe has many low income members who would suffer from additional rate increases. *See* Petition at 13. The Commission has recognized the incidence of “low incomes and poverty” as “key reasons for the low subscribership levels on tribal lands.” *Unserved Areas Order, supra*, at ¶ 20. Raising the cost of services to maintain its network could well have the effect of causing some Tribe members to cancel local service, a result that is surely inconsistent with the requirements of Section 254.

GRTI does not seek relief from the Commission’s rules or policies lightly, and accepted the loss of Universal Support for its high cost loop plant following its facilities upgrade, for the initial period of the freeze. GRTI is not seeking a waiver for the original initial period of the

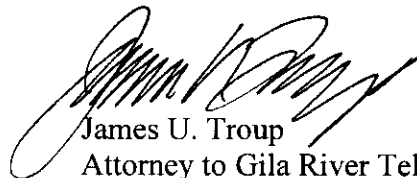
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separations freeze, and therefore is not requesting any changes in Universal Service support prior to June 30, 2006, when the initial period expired.

In adopting the freeze, the Commission previously recognized the potential harm to smaller carriers. *See, Jurisdictional Separations and Referral to Federal-State Joint Board, Report and Order*, 16 FCC Rcd. 11382, ¶ 18 (2001). The Joint Board subsequently noted the potential legal infirmities of extending a freeze that had already been in place for five years, and recommended a "short period only" - perhaps one year - for any extension. *Jurisdictional Separations and Referral to Federal-State Joint Board, Order and Further Notice of Proposed Rulemaking*, 21 FCC Rcd 5516, 5574 (2006). A year has passed in the new three year freeze. The freeze has now been in place for a total of more than six years, with at least two more years remaining. *Id.* at 5523. GRTI's ability to serve its high-cost, sparsely-populated service area is already suffering from its inability to recover \$1.2 million worth of its annual costs that would otherwise be supported by the Universal Service Fund, and an additional two years of such significant losses will only result in greater disparity between the telecommunications services available on the GRIC's tribal lands and those enjoyed by the broader American population.

For the foregoing reasons and the reasons stated in the Petition, GRTI respectfully submits that the relief requested in its Petition will serve the public interest and advance universal service, and should be expeditiously granted.

Respectfully submitted,



James U. Troup
Attorney to Gila River Telecommunications, Inc.

cc: Jeremy Marcus
Amy Bender

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EXHIBIT A

NOT FOR PUBLIC INSPECTION
CONTAINS CONFIDENTIAL AND PROPRIETARY INFORMATION

REDACTED – FOR PUBLIC INSPECTION

EXHIBIT B

NOT FOR PUBLIC INSPECTION
CONTAINS CONFIDENTIAL AND PROPRIETARY INFORMATION

REDACTED – FOR PUBLIC INSPECTION

EXHIBIT C

NOT FOR PUBLIC INSPECTION
CONTAINS CONFIDENTIAL AND PROPRIETARY INFORMATION

REDACTED – FOR PUBLIC INSPECTION

EXHIBIT D

NOT FOR PUBLIC INSPECTION
CONTAINS CONFIDENTIAL AND PROPRIETARY INFORMATION